

## **NEBRASKA STATUTES CONTAINING REFERENCES TO COMMUNICABLE DISEASE SURVEILLANCE AND CONTROL**

October, 1999

(This material is for informational purposes only. It is not intended to be legal advice and should not be used to resolve legal problems. For legal advice or interpretation, consult an attorney.)

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### **CHAPTER 20. Civil Rights.**

#### **20-167. Discrimination; legislative intent; state agencies; duties.**

It is the intent of the Legislature that no person should be discriminated against on the basis of having taken a human immunodeficiency virus antibody or antigen test.

Each agency of state government shall examine policies and practices within its jurisdiction that may intentionally or unintentionally result in discrimination against a person who has taken a human immunodeficiency virus antibody or antigen test or who has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex to ascertain the extent and types of discrimination that may exist. Each agency shall identify proposed changes in statutes or agency rules and regulations to remedy discrimination. Each agency shall report its findings to the Legislature on or before December 1, 1988.

#### **20-168. Employment, dwelling, school district, place of public accommodation; discrimination prohibited; civil action; authorized.**

(1) An employer shall not (a) refuse to hire an individual, (b) discharge an individual, or (c) otherwise discriminate against an individual with respect to compensation or terms, conditions, or privileges of employment on the basis that the individual is suffering or is suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome.

(2) A seller or lessor shall not refuse to sell or lease a dwelling as defined in section 20-310 to an individual on the basis that the individual, a member of the individual's family, or a person who will be residing with the individual is suffering or is suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome.

(3) A school district shall not deny admission to a student on the basis that the student is suffering or is suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome.

(4) A place of public accommodation as defined in section 20-133 shall not deny equal access to such public accommodation on the basis that the individual is suffering or is suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome.

(5) Any individual who has been discriminated against in violation of this section may file a civil action to enforce this section in the district court of the county where the discrimination is alleged to have occurred. The remedy granted by this subsection shall be in addition to any other remedy provided by law and shall not be interpreted as denying any other remedy provided by law.

#### **20-169. Individual; threat to health or safety; unable to perform duties; effect.**

Actions otherwise prohibited by subsections (1) and (3) of section 20-168 shall not constitute a violation of the requirements of such section if the individual suffering from or suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome poses a direct threat to the health or safety of himself, herself, or other individuals or is unable to perform the duties of the job he or she is applying for or is employed to perform.

### **CHAPTER 29. Criminal Procedure.**

#### **29-2290. Test, counseling, and reports; when required; Department of Correctional Services; Department of Health and Human Services; duties; cost; appeal; effect.**

(1) Notwithstanding any other provision of law, when a person has been convicted of sexual assault pursuant to sections 28-317 to 28-320, sexual assault of a child pursuant to section 28-320.01, or any other offense under Nebraska law when sexual contact or sexual penetration is an element of the offense, the presiding judge shall, at the request of the victim as part of the sentence of the convicted person when the circumstances of the case demonstrate a possibility of transmission of the human immunodeficiency virus, order the convicted person to submit to a human immunodeficiency virus antibody or antigen test. Such test shall be conducted under the jurisdiction of the Department of Correctional Services. The Department of Correctional Services shall make the results of the test available only to the victim, to the parents or guardian of the victim if the victim is a minor or is mentally incompetent, to the convicted person, to the parents or guardian of the convicted person if the convicted person is a minor or mentally incompetent, to the court issuing the order for testing, and to the Department of Health and Human Services.

(2) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Department of Correctional Services shall provide counseling to the convicted person regarding human immunodeficiency virus disease and referral to appropriate health care and support services.

(3) The Department of Correctional Services shall provide to the Department of Health and Human Services the result of any human immunodeficiency virus test conducted pursuant to this section and information regarding the request of the victim. The Department of Health and Human Services shall notify the victim or the parents or guardian of the victim if the victim is a minor or mentally incompetent and shall make available to the victim counseling and testing regarding human immunodeficiency virus disease and referral to appropriate health care and support services.

(4) The cost of testing under this section shall be paid by the convicted person tested unless the court has determined the convicted person to be indigent.

(5) Filing of a notice of appeal shall not automatically stay an order that the convicted person submit to a human immunodeficiency virus test.

(6) For purposes of this section:

- (a) Convicted shall include adjudicated under juvenile proceedings;
- (b) Convicted person shall include a child adjudicated of an offense described in subsection (1) of this section; and
- (c) Sentence shall include a disposition under juvenile proceedings.

(7) The Department of Correctional Services, in consultation with the Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out this section.

#### CHAPTER 44. Insurance.

##### **44-2818. Health care provider; express or implied contract assuring results; liability; when.**

No liability shall be imposed upon any health care provider on the basis of an alleged breach of an express or implied contract assuring results to be obtained; from any procedure undertaken in the course of health care, unless such contract is expressly set forth in writing and is signed by such health care provider or by an authorized agent of such health care provider. Nothing in this section shall exempt any health care provider from the standard of due care in administering any procedure undertaken.

#### CHAPTER 71. Public Health and Welfare.

##### **71-501. Contagious diseases; county board of health; chairman; salary; powers and duties.**

The county boards of the several counties shall make and enforce regulations to prevent the introduction and spread of contagious, infectious, and malignant diseases in their respective counties. To that end a board of health shall be created, consisting of three members: The sheriff, who shall be chairperson and quarantine officer; a physician who resides permanently in the county, but if the county has no resident physician, then one conveniently situated, who shall be medical adviser, and who shall be chosen by the board of county commissioners or

supervisors; and the county clerk or superintendent, to be appointed by the county board of commissioners or supervisors who shall be secretary. The county board may pay the chairperson of the board of health a salary for such services not to exceed fifty dollars per month, as fixed by the county board. The board shall make rules and regulations to safeguard the health of the people, prevent nuisances and insanitary conditions, and enforce the same throughout all the territory comprising such county, except incorporated cities and villages, and provide penalties for the violation thereof.

Should the board of health fail to enact rules and regulations as herein provided, it shall enforce the rules and regulations promulgated by the Department of Health and Human Services Regulation and Licensure.

**71-501.01. Acquired immunodeficiency syndrome; legislative findings.**

The Legislature recognizes that acquired immunodeficiency syndrome, AIDS, is an incurable life-threatening illness which is epidemic in the United States. Persons who suffer from acquired immunodeficiency syndrome and its related diseases and conditions must receive appropriate and humane care. All members of the general public must have accurate and complete information concerning the characteristics of the disease and the avoidance of infection. The public must be motivated to protect themselves and others against the spread of the disease. The successful containment of the epidemic calls for strong commitment and support from all segments of our society. It is the intent of the Legislature to authorize a program of services to protect the public health.

**71-501.02. Acquired immunodeficiency syndrome program; department; powers.**

The Department of Health and Human Services may establish and administer a statewide acquired immunodeficiency syndrome program for the purpose of providing education, prevention, detection, and counseling services to protect the public health. In order to implement the program, the department may:

- (1) Apply for, receive, and administer federal and other public and private funds and contract for services, equipment, and property as necessary to use such funds for the purposes specified in section 71-501.01 and this section;
- (2) Provide education and training regarding acquired immunodeficiency syndrome and its related diseases and conditions to the general public and to health care providers. The department may charge fees based on administrative costs for such services. Any fees collected shall be deposited in the state treasury and shall be credited to the Department of Health and Human Services Cash Fund;
- (3) Provide resource referrals for medical care and social services to persons affected by acquired immunodeficiency syndrome and its related diseases and conditions;
- (4) Contract or provide for voluntary, anonymous, or confidential screening, testing, and counseling services. All sites providing such services pursuant to a contract with the department shall provide services on an anonymous basis if so requested by the individual seeking such services. The department may charge and permit its contractors to charge an administrative fee or may request donations to defer the cost of the services but shall not deny the services for failure to pay any administrative fee or for failure to make a donation;
- (5) Cooperate with the Centers for Disease Control and Prevention of the Public Health Service of the United States Department of Health and Human Services or its successor for the purposes of research into and investigation of acquired immunodeficiency syndrome and its related diseases and conditions; and
- (6) To the extent funds are available, offer services that are culturally and language specific upon request to persons identified as having tested positive for the human immunodeficiency virus infection. Such services shall include, but not be limited to, posttest counseling, partner notification, and such early intervention services as case management, behavior modification and support services, laboratory quantification of lymphocyte subsets, immunizations, Mantoux testing for tuberculosis, prophylactic treatment, and referral for other medical and social services.

**71-502. Communicable diseases; rules and regulations; control; powers of Department of Health and Human Services Regulation and Licensure.**

The Department of Health and Human Services Regulation and Licensure shall have supervision and control of all matters relating to necessary communicable disease control and shall adopt and promulgate such proper and reasonable general rules and regulations as will best serve to promote communicable disease control throughout the state and prevent the introduction or spread of disease. In addition to such general and standing rules and regulations,

(1) in cases of emergency in which the health of the people of the entire state or any locality in the state is menaced by or exposed to any contagious, infectious, or epidemic disease, illness, or poisoning,

(2) when a local board of health having jurisdiction of a particular locality fails or refuses to act with sufficient promptitude and efficiency in any such emergency, or

(3) in localities in which no local board of health has been established, as provided by law, the department shall adopt, promulgate, and enforce special communicable disease control rules and regulations such as the occasion and proper protection of the public health may require. All necessary expenses incurred in the enforcement of such rules and regulations shall be paid by the city, village, or county for and within which the same have been incurred. All officers and other persons shall obey and enforce such communicable disease control rules and regulations as may be adopted and promulgated by the department.

**71-502.01. Sexually transmitted diseases; enumerated.**

Sexually transmitted diseases are declared to be contagious, infectious, communicable, and dangerous to the public health. Sexually transmitted diseases shall include, but not be limited to, syphilis, gonorrhea, chancroid, and such other sexually transmitted diseases as the Department of Health and Human Services Regulation and Licensure may from time to time specify.

**71-502.02. Sexually transmitted diseases; rules and regulations.**

The Department of Health and Human Services Regulation and Licensure shall adopt and promulgate such rules and regulations as shall, in its judgment, be necessary to control and suppress sexually transmitted diseases.

**71-502.03. Pregnant women; subject to syphilis test; fee.**

Every physician, or other person authorized by law to practice obstetrics, who is attending a pregnant woman in the state for conditions relating to her pregnancy during the period of gestation or at delivery shall take or cause to be taken a sample of the blood of such woman at the time of the first examination and shall submit such sample to an approved laboratory for a standard serological test for syphilis. Every other person permitted by law to attend pregnant women in the state, but not permitted by law to take blood samples, shall cause such a sample of the blood of such pregnant women to be taken by a physician, duly licensed to practice either medicine and surgery or obstetrics, or other person authorized by law to take such sample of blood and have such sample submitted to an approved laboratory for a standard serological test for syphilis. The results of all such laboratory tests shall be reported to the Director of Regulation and Licensure on standard forms prescribed and furnished by the Department of Health and Human Services Regulation and Licensure. For the purpose of this section, a standard serological test shall be a test for syphilis approved by the Director of Regulation and Licensure and shall be made at a laboratory approved to make such tests by the Director of Regulation and Licensure. Such laboratory tests, as are required by this section, shall be made on request at the Department of Health and Human Services Regulation and Licensure laboratory. A fee may be established by rule and regulation by the department to defray no more than the actual cost of such tests. Such fee shall be deposited in the state treasury and credited to the Department of Health and Human Services Regulation and Licensure Cash Fund. In reporting every birth and stillbirth, physicians and others required to make such reports shall state on the portion of the certificate entitled For Medical and Health Use Only whether a blood test for syphilis has been made upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed and the approximate date when the specimen was taken. No birth

certificate shall show the result of such test. If no test was made, the reason shall be stated. The department shall provide the necessary clerical, printing, and other expenses in carrying out this section.

**71-502.04. Laboratory; test results; notification required; confidential.**

Any person who is in charge of a clinical laboratory in which a laboratory examination of any specimen derived from the human body yields microscopical, cultural, immunological, serological, or other evidence of disease, illness, or poisoning as the Department of Health and Human Services Regulation and Licensure may from time to time specify shall promptly notify the official local health department or the Department of Health and Human Services Regulation and Licensure of such findings.

Each notification shall give the date and result of the test performed, the name and, when available, the age of the person from whom the specimen was obtained, and the name and address of the physician for whom such examination or test was performed. A legible copy of the laboratory report shall be deemed satisfactory notification.

**71-503. Contagious, infectious, or other disease or illness; poisoning; duty of attending physician; violation; penalty.**

All attending physicians shall report to the official local health department or the Department of Health and Human Services Regulation and Licensure promptly, upon the discovery thereof, the existence of any contagious or infectious diseases and such other disease, illness, or poisoning as the Department of Health and Human Services Regulation and Licensure may from time to time specify. Any attending physician, knowing of the existence of any such disease, illness, or poisoning, who fails promptly to report the same in accordance with this section, shall be deemed guilty of a Class V misdemeanor for each offense.

**71-503.01. Reports required; confidentiality; limitations on use ; immunity.**

Whenever any statute of the state, any ordinance or resolution of a municipal corporation or political subdivision enacted pursuant to statute, or any rule or regulation of an administrative agency adopted and promulgated pursuant to statute requires medical practitioners or other persons to report cases of communicable diseases, including sexually transmitted diseases and other reportable diseases, illnesses, or poisonings or to give notification of positive laboratory findings to the Department of Health and Human Services Regulation and Licensure or any county or city board of health, local health department established pursuant to sections 71-1626 to 71-1636, city health department, local health agency, or state or local public official exercising the duties and responsibilities of any board of health or health department, such reports or notifications and the resulting investigations shall be confidential except as provided in this section, shall not be subject to subpoena, and shall be privileged and inadmissible in evidence in any legal proceeding of any kind or character and shall not be disclosed to any other department or agency of the State of Nebraska, except that such information shall be shared with the immunization program within the Department of Health and Human Services which maintains staff and programs specifically designed for the surveillance, prevention, education, and outbreak control of diseases preventable through immunization.

In order to further the protection of public health, such reports and notifications may be disclosed by the Department of Health and Human Services Regulation and Licensure, the official local health department, and the person making such reports or notifications to the Centers for Disease Control and Prevention of the Public Health Service of the United States Department of Health and Human Services or its successor in such a manner as to ensure that the identity of any individual cannot be ascertained. To further protect the public health, the Department of Health and Human Services Regulation and Licensure, the official local health department, and the person making the report or notification may disclose to the official state and local health departments of other states, territories, and the District of Columbia such reports and notifications, including sufficient identification and information so as to ensure that such investigations as deemed necessary are made.

The appropriate board, health department, agency, or official may:

(1) Publish analyses of such reports and information for scientific and public health purposes in such a manner as to ensure that the identity of any individual concerned cannot be ascertained;

(2) discuss the report or notification with the attending physician; and

(3) make such investigation as deemed necessary.

Any medical practitioner, any official health department, the Department of Health and Human Services Regulation and Licensure, or any other person making such reports or notifications shall be immune from suit for slander or libel or breach of privileged communication based on any statements contained in such reports and notifications.

**71-504. Sexually transmitted diseases; minors; treatment without consent of parent; expenses.**

The Director of Health and Human Services, the Director of Regulation and Licensure, or local director of health, if a physician, or his or her agent, or any physician, upon consultation by any person as a patient, shall, with the consent of such person who is hereby granted the right of giving such consent, make or cause to be made a diagnostic examination for sexually transmitted diseases and prescribe for and treat such person for sexually transmitted diseases including prophylactic treatment for exposure to sexually transmitted diseases whenever such person is suspected of having a sexually transmitted disease or contact with anyone having a sexually transmitted disease. All such examinations and treatment may be performed without the consent of or notification to the parent, parents, guardian, or any other person having custody of such person. In any such case, the Director of Health and Human Services, the Director of Regulation and Licensure, or local director of health, if a physician, or his or her agent, or the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions. The Director of Health and Human Services or local director of health, if a physician, or his or her agent, or the physician shall incur no civil or criminal liability by reason of any adverse reaction to medication administered if reasonable care is taken to elicit from any such person who is under twenty years of age any history of sensitivity or previous adverse reaction to medication. Parents shall be liable for expenses of such treatment to minors under their custody. In the event such person is affected with a sexually transmitted disease, the Director of Regulation and Licensure or local director of health may cause an interview of the person by a sexually transmitted disease investigator to secure the names of sexual contacts so that appropriate investigation can be made in an effort to locate and eliminate sources of infection.

**71-505. Department of Health and Human Services Regulation and Licensure; public health; duties; fees.**

(1) It shall be the duty of the Department of Health and Human Services Regulation and Licensure, in addition to other duties provided by law, to secure and maintain in all parts of the state an official record and notification of reportable diseases, illnesses, or poisonings. It shall be the duty of the Department of Health and Human Services, in addition to other duties provided by law, to provide popular literature upon the different branches of public health and distribute the same free throughout the state in a manner best calculated to promote that interest, to prepare and exhibit in the different communities of the state public health demonstrations accompanied by lectures and audiovisual aids, to provide preventive services to protect the public, and in all other effective ways to prevent the origin and spread of disease and promote the public health.

(2) The Department of Health and Human Services may provide technical services to and on behalf of health care providers and may charge fees for such services in an amount sufficient to recover the administrative costs of such services. Such fees shall be paid into the state treasury and credited to the Department of Health and Human Services Cash Fund.

**71-506. Violations; penalty; enforcement.**

Any person violating any of the provisions of sections 71-501 to 71-505, 71-507 to 71-513, or 71-514.01 to 71-514.05 or section 71-531 shall be guilty of a Class V misdemeanor for each offense, except that any person who willfully or maliciously discloses, except as provided by law, the content of any reports, notifications, or resulting investigations made under section



71-502 and subject to the confidentiality provisions of section 71-503.01 shall be guilty of a Class III misdemeanor. The Attorney General or the county attorney may, in accordance with the laws of the state governing injunctions and other process, maintain an action in the name of the state against any person or any private or public entity for violating sections 71-501 to 71-505, 71-507 to 71-513, or 71-514.01 to 71-514.05 or section 71-531 and the rules and regulations adopted and promulgated under such sections.

**71-507. Terms, defined.**

For purposes of sections 71-507 to 71-513:

(1) Alternate facility means a facility other than a health care facility that receives a patient transported to the facility by an emergency services provider:

(2) Department means the Department of Health and Human Services Regulation and Licensure;

(3) Designated physician means the physician representing the emergency services provider as identified by name, address, and telephone number on the significant exposure report form. The designated physician shall serve as the contact for notification in the event an emergency services provider believes he or she has had significant exposure to an infectious disease or condition. Each emergency services provider shall designate a physician as provided in subsection (2) of section 71-509;

(4) Emergency services provider means an out-of-hospital emergency care provider certified pursuant to the Emergency Medical Services Act, a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, a funeral director, a firefighter, and a person rendering emergency care gratuitously as described in section 25-21,186;

(5) Funeral director means a person licensed under section 71-1302 or an employee of such a person with responsibility for transport or handling of a deceased human;

(6) Funeral establishment means a business licensed under section 71-1327;

(7) Health care facility has the meaning found in subdivisions (2), (10), (11), and (20) of section 71-2017.01 or any facility that receives patients of emergencies who are transported to the facility by emergency services providers;

(8) Infectious disease or condition means hepatitis B, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, diphtheria, plague, hemorrhagic fevers, rabies, and such other diseases as the department may by rule and regulation specify;

(9) Patient means an individual who is sick, injured, wounded, deceased, or otherwise helpless or incapacitated;

(10) Patient's attending physician means the physician having the primary responsibility for the patient as indicated on the records of a health care facility;

(11) Provider agency means any law enforcement agency, fire department, emergency medical service, funeral establishment, or other entity which employs or directs emergency services providers;

(12) Responsible person means an individual who has been designated by an alternate facility to carry out the facility's responsibilities under sections 71-507 to 71-513. A responsible person may be designated on a case-by-case basis;

(13) Significant exposure means a situation in which the body fluids, including blood, saliva, urine, respiratory secretions, or feces, of a patient have entered the body of an emergency services provider through a body opening including the mouth or nose, a mucous membrane, or a break in skin from cuts or abrasions, from a contaminated needlestick or scalpel, from intimate respiratory contact, or through any other situation when the patient's body fluids may have entered the emergency services provider's body or when an airborne pathogen may have been transmitted from the patient to the emergency services provider; and

(14) Significant exposure report form means the form used by the emergency services provider to document information necessary for notification of significant exposure to an infectious disease or condition.

**71-508. Exposure to infectious disease or condition; form; department; duties.**

The department shall prescribe a form for use by the emergency services provider to notify the health care facility or alternate facility and the designated physician that the provider

believes he or she has had a significant exposure to an infectious disease or condition. The form shall include identifying information for the emergency services provider, the provider agency, the designated physician, the patient, the patient's attending physician, and the receiving health care facility or alternate facility, a description of the exposure, a description of the protective measures and equipment used by the provider to minimize exposure hazard, and such other information as is necessary to protect the public health and safety and to implement sections 71-507 to 71-513.

**71-509. Health care facility or alternate facility; emergency services provider; significant exposure; completion of form; reports required; tests; notification; costs.**

(1) If a health care facility or alternate facility determines that a patient treated or transported by an emergency services provider has been diagnosed or detected with an infectious airborne disease, the health care facility or alternate facility shall notify the department as soon as practical but not later than forty-eight hours after the determination has been made. The department shall investigate all notifications from health care facilities and alternate facilities and notify as soon as practical the physician medical director of each emergency medical service with an affected out-of-hospital emergency medical services provider employed by or associated with the service, the fire chief of each fire department with an affected firefighter employed by or associated with the department, the head of each law enforcement agency with an affected peace officer employed by or associated with the agency, the funeral director of each funeral establishment with an affected individual employed by or associated with the funeral establishment, and any emergency services provider known to the department with a significant exposure who is not employed by or associated with an emergency medical service, a fire department, a law enforcement agency, or a funeral establishment. Notification of affected individuals shall be made as soon as practical.

(2) Whenever an emergency services provider believes he or she has had a significant exposure while acting as an emergency services provider, he or she may complete a significant exposure report form. A copy of the completed form shall be given by the emergency services provider to the health care facility or alternate facility, to the emergency services provider's supervisor, and to the designated physician.

(3) Upon receipt of the significant exposure form, if a patient has been diagnosed during the normal course of treatment as having an infectious disease or condition or information is received from which it may be concluded that a patient has an infectious disease or condition, the health care facility or alternate facility receiving the form shall notify the designated physician pursuant to subsection (5) of this section. If the patient has not been diagnosed as having an infectious disease or condition and upon the request of the designated physician, the health care facility or alternate facility shall request the patient's attending physician or other responsible person to order the necessary diagnostic testing of the patient to determine the presence of an infectious disease or condition. Upon such request, the patient's attending physician or other responsible person shall order the necessary diagnostic testing subject to section 71-510. Each health care facility shall develop a policy or protocol to administer such testing and assure confidentiality of such testing.

(4) Results of tests conducted under this section and section 71-510 shall be reported by the health care facility or alternate facility that conducted the test to the designated physician and to the patient's attending physician, if any.

(5) Notification of the patient's diagnosis of infectious disease or condition, including the results of any tests, shall be made orally to the designated physician within forty-eight hours of confirmed diagnosis. A written report shall be forwarded to the designated physician within seventy-two hours of confirmed diagnosis.

(6) Upon receipt of notification under subsection (5) of this section, the designated physician shall notify the emergency services provider of the exposure to infectious disease or condition and the results of any tests conducted under this section and section 71-510.

(7) The notification to the emergency services provider shall include the name of the infectious disease or condition diagnosed but shall not contain the patient's name or any other identifying information. Any person receiving such notification shall treat the information received as confidential and shall not disclose the information except as provided in sections 71-507 to 71-513.

(8) The provider agency shall be responsible for the costs of diagnostic testing required under this section and section 71-510, except that if a person renders emergency care gratuitously as described in section 25-21,186, such a person shall be responsible for the costs.

(9) The patient's attending physician shall inform the patient of test results for all tests conducted under such sections.

**71-510. Emergency medical services provider; significant exposure; patient testing; conditions.**

(1) The patient shall be informed that he or she has the right to consent to the test for presence of an infectious disease or condition and that if the patient refuses the test, such refusal will be communicated to the emergency services provider.

(2) If the patient is unconscious or incapable of signing an informed consent form, the consent may be obtained from the patient's next of kin or legal guardian.

(3) If an emergency services provider has a significant exposure which, in the opinion of the designated physician, could involve the transmission of hepatitis B or human immunodeficiency virus, the patient's attending physician shall initiate the necessary diagnostic blood tests of the patient. If the patient or patient's representative refuses to grant consent for such test and a sample of the patient's blood is available, the blood shall be tested for hepatitis B or human immunodeficiency virus. If the patient or patient's guardian refuses to grant consent and a sample of the patient's blood is not available, the patient's refusal shall be communicated to the designated physician who shall inform the emergency services provider. The emergency services provider may petition the district court for an order mandating that the test be performed.

(4) If a patient is deceased, no consent shall be required to test for the presence of an infectious disease or condition.

**71-511. Patient information or test; confidentiality.**

(1) Information concerning any patient or test results obtained under sections 71-507 to 71-513 shall be maintained as confidential by the health care facility or alternate facility that received or tested the patient, the designated physician, the patient's attending physician, the emergency services provider, and the provider agency except as provided by such sections and sections 71-503.01 and 71-2017 and the rules and regulations adopted and promulgated pursuant to such sections. Such information shall not be made public upon subpoena, search warrant, discovery proceedings, or otherwise except as provided by such sections.

(2) The information described in subsection (1) of this section may be released with the written consent of the patient or, if the patient is deceased or incapable of giving informed consent, with the written consent of his or her next of kin, legal guardian, or personal representative of his or her estate.

**71-512. Health care facilities; provider agencies; adopt procedures.**

All health care facilities and provider agencies subject to sections 71-507 to 71-513 shall adopt written procedures regarding infectious diseases or conditions which address preexposure safeguards, notification procedures, and postexposure risk-reduction methods.

**71-513. Immunity from liability; when.**

Any health care facility, provider agency, or agent, employee, administrator, physician, or other representative of such health care facility or provider agency who in good faith provides or fails to provide notification, testing, or other action as required by sections 71-507 to 71-513 shall have immunity from any liability, either criminal or civil, that might result by reason of such action or inaction.

**71-514. Repealed. Laws 1983, LB 44, s. 1.**

**71-514.01. Health care providers; legislative findings.**

The Legislature hereby finds that health care providers are at risk of significant exposure to the blood and other body fluids of patients as a result of their work. The testing of such body fluids for the presence of infectious disease is necessary to provide postexposure risk-reduction

methods and treatment, if necessary, for health care providers when there is a significant exposure to the body fluid of a patient and there are unresolved issues of consent by the patient to the testing of such fluids.

**71-514.02. Health care providers; terms, defined.**

For purposes of sections 71-514.01 to 71-514.05:

(1) Health care provider means a person who provides care to a patient which is designed to improve the status of his or her health whether this care is rendered in the hospital or community setting and whether the provider is paid or voluntary.

Health care provider does not mean an emergency services provider as defined in section 71-507;

(2) Infectious disease or condition means hepatitis B, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, and such other diseases as the Department of Health and Human Services Regulation and Licensure may from time to time specify;

(3) Patient means an individual who is sick, injured, wounded, or otherwise helpless or incapacitated;

(4) Provider agency means any health care facility or agency which is in the business of providing health care services; and

(5) Significant exposure to blood or other body fluid means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other materials known to transmit infectious diseases that results from providing care.

**71-514.03. Health care providers; significant exposure to blood or body fluid; procedure; cost; restriction.**

(1) If a health care provider has a significant exposure to the blood or body fluid of a patient as determined and documented by a designated representative of the provider agency according to a written protocol:

(a) The patient shall be informed that he or she has the right to consent to the diagnostic testing of his or her body fluid for presence of an infectious disease or condition and that if the patient refuses to grant consent, such refusal shall be communicated to the health care provider;

(b) If the patient is unconscious or incapable of signing an informed consent form, the consent may be obtained from the patient's next of kin or legal guardian;

(c) If the patient or patient's next of kin or legal guardian refuses to grant consent for such testing and a sample of the patient's blood or other body fluid is available, the sample shall be tested for the presence of infectious disease or condition. If an available sample of blood or other body fluid is tested without consent, the patient or patient's next of kin or legal guardian shall be notified that the available sample is being tested and informed of the purpose of the test and test results. If the human immunodeficiency virus test result is positive, the health care provider or provider agency shall refer the patient for posttest counseling. If the patient or patient's guardian refuses to grant consent and a sample of the patient's blood or other body fluid is not available, the health care provider or provider agency may petition the district court for an order mandating that the testing be performed; or

(d) If a patient dies without the opportunity to consent to such testing, testing for the presence of an infectious disease or condition shall be conducted.

(2) The provider agency shall be responsible for the cost of such diagnostic testing.

(3) Routine drawing of a sample of blood or other body fluid for the purpose of testing for infectious disease or conditions without obtaining consent shall be prohibited.

**71-514.04. Health care providers; patient information or test results; confidentiality; release of information.**

(1) Information concerning any patient or test results obtained under section 71-514.03 shall be maintained as confidential by the health care facility that received or tested the patient, the patient's attending physician, the health care provider, and the provider agency except as provided by section 71-503.01 and the rules and regulations adopted and promulgated pursuant

to such section. Such information shall not be made public upon subpoena, search warrant, discovery proceedings, or otherwise except as provided by such section.

(2) The information described in subsection (1) of this section may be released with the written consent of the patient or, if the patient is deceased or incapable of giving informed consent, with the written consent of his or her next of kin, legal guardian, or personal representative of his or her estate.

**71-514.05. Health care providers; provider agencies; adopt procedures.**

Provider agencies shall adopt written procedures regarding infectious diseases or conditions which address preexposure safeguards and postexposure risk-reduction methods. All records regarding any tests made as a result of a significant exposure of a health care provider to blood or other body fluid shall be kept only for the purpose of medical surveillance of an occupational risk of the health care provider.

**71-531. Test; written informed consent required; anonymous testing; exemptions.**

(1) No person may be tested for the presence of the human immunodeficiency virus infection unless he or she has given written informed consent for the performance of such test. A parent of a minor child or a judicially appointed guardian may give such consent.

(2) The written informed consent shall provide:

(a) An explanation of the test, including the test's purposes, potential uses, and limitations, and the meaning of both positive and negative results;

(b) An explanation of the nature of the human immunodeficiency virus and acquired immunodeficiency syndrome, including the relationship between the test results and the diseases which are part of the syndrome;

(c) An explanation of the procedures to be followed, including the fact that the test is entirely voluntary; and

(d) Information concerning behavioral patterns known to expose a person to the possibility of contracting the human immunodeficiency virus and the methods for minimizing the risk of exposure.

(3) A person seeking a human immunodeficiency virus test shall have the right to remain anonymous. A health care provider shall confidentially refer such person to a site which provides anonymous testing.

(4) This section shall not apply to:

(a) The performance by a health care provider or a health facility of a human immunodeficiency virus test when the health care provider or health facility procures, processes, distributes, or uses a human body part for a purpose specified under the Uniform Anatomical Gift Act and such test is necessary to assure medical acceptability of such gift for the purposes intended;

(b) The performance by a health care provider or a health facility of a human immunodeficiency virus test when such test is performed with the consent and written authorization of the person being tested and such test is for insurance underwriting purposes, written information about the human immunodeficiency virus is provided, including, but not limited to, the identification and reduction of risks, the person is informed of the result of such test, and when the result is positive, the person is referred for posttest counseling;

(c) The performance of a human immunodeficiency virus test by licensed medical personnel of the Department of Correctional Services when the subject of the test is committed to such department. Posttest counseling shall be required for the subject if the test is positive. A person committed to the Department of Correctional Services shall be informed by the department (i) if he or she is being tested for the human immunodeficiency virus, (ii) that education shall be provided to him or her about the human immunodeficiency virus, including, but not limited to, the identification and reduction of risks, and (iii) of the test result and the meaning of such result;

(d) Human immunodeficiency virus home collection kits licensed by the federal Food and Drug Administration; or

(e) The performance of a human immunodeficiency virus test performed pursuant to section 29-2290 or sections 71-507 to 71-513 or 71-514.01 to 71-514.05.

**71-532. Test results reportable; manner.**

The Department of Health and Human Services Regulation and Licensure shall adopt and promulgate rules and regulations which make the human immunodeficiency virus infection reportable by name in the same manner as communicable diseases under section 71-502.

**71-533. Terms, defined.**

For purposes of sections 71-533 to 71-538:

(1) Department means the Department of Health and Human Services Regulation and Licensure;

(2) Exposure-prone invasive procedure means a procedure which presents a recognized risk of percutaneous injury to a health care worker which is likely to result in the health care worker's blood contacting the patient's body cavity, subcutaneous tissues, or mucous membranes. Characteristics of exposure-prone invasive procedures include digital palpation of a needle tip in a body cavity or the simultaneous presence of the health care worker's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site; and

(3) Health care worker means an individual who furnishes direct patient care:

(a) Under a license, certificate, or registration issued by this state;

(b) Under the auspices of a health care facility licensed under sections 71-2017 to 71-2029 or an individual described in subdivision (3)(a) of this section; or

(c) In the course of a training or educational program.

**71-534. Infected health care workers; seek counsel; when.**

Health care workers who are infected with the human immunodeficiency virus, HIV, or the hepatitis B virus, HBV, and provide direct patient care shall seek counsel from an expert review panel and be advised under what circumstances, if any, they may continue to practice. Failure to comply with the recommendations of the panel shall be considered unprofessional conduct for purposes of sections 71-147 and 71-148 or similar disciplinary provisions applicable to the health care worker.

**71-535. Expert review panels; membership; duties.**

(1) The department shall convene expert review panels for the purpose of providing recommendations to a health care worker who provides direct patient care and is infected with the human immunodeficiency virus or the hepatitis B virus and shall provide administrative support and coordination for such panels, including maintenance of records. An expert review panel shall include experts who represent a balanced perspective. The experts may include all of the following: The health care worker's personal physician, an infectious disease specialist with expertise in the epidemiology of human immunodeficiency virus or hepatitis B virus transmission, a health professional with expertise in the procedures performed by the health care worker, a public health official, and a representative of a facility infection control committee. No panel member shall be a member of the licensing board of the profession or occupation of the health care worker seeking counsel from an expert review panel.

(2) Recommendations of an expert review panel regarding limitations, monitoring, and reporting of practice shall be made on a case-by-case basis. Factors to be considered by the panel include, but are not limited to:

(a) Whether the individual's practice includes exposure-prone invasive procedures;

(b) the types of procedures performed;

(c) the infection control technique;

(d) the mental and physical condition of the health care worker; and

(e) the worksites of the health care worker.

Recommendations of the panel shall be in writing and may include recommendations for the reporting of and monitoring for changes in the practice or health of the health care worker. The panel may make further recommendations as a result of the reports and monitoring.

**71-536. Expert review panel; confidentiality.**

The proceedings of an expert review panel, including the files, the written recommendations, and any reports made as a consequence of the recommendations are confidential, are not public records, are not subject to subpoena or discovery, and are inadmissible in legal proceedings of any kind, except that the panel must disclose the information to the department as licensing authority and the licensing board if the health care worker endangers the public health by failing to comply with the panel's recommendations. Disclosures to the department made under this section by an expert review panel shall be confidential and treated in the same manner as complaints and investigative files under subsection (7) of section 71-168.01.

Any records held by the department specific to a panel proceeding shall be separately and securely maintained from other records of the department and may be disclosed within the department only as provided in this section. For purposes of sections 84-1408 to 84-1414, an expert review panel is not a public body.

**71-537. Expert review panel; immunity; when.**

Members of an expert review panel convened by the department, the department and its officials and employees, and any person who provides information to such a panel shall be immune from civil or criminal liability of any nature, whether direct or derivative, for activities performed under sections 71-535 and 71-536, except that persons may be civilly liable for disclosure of information in violation of section 71-536 and criminally liable as provided in section 71-538.

**71-538. Disclosure of confidential information; penalty.**

No person, including, but not limited to, expert review panel members, departmental officials and employees, and members of licensing boards, having access to the files, recommendations, reports, or other information of an expert review panel shall disclose such information in violation of section 71-536. Violation of this section is a Class I misdemeanor.

**71-3401. Information, statements, and data; furnish without liability.**

Any person, hospital, sanitarium, nursing home, rest home, or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to the Department of Health and Human Services Regulation and Licensure, the Nebraska Medical Association or any of its allied medical societies, the Nebraska Association of Hospitals and Health Systems, any in hospital staff committee, or any joint venture of such entities to be used in the course of any study for the purpose of reducing morbidity or mortality, and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided such information or material, by reason of having released or published the findings and conclusions of such groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies.

**71-3402. Publication of material; purpose; identity of person confidential.**

The Department of Health and Human Services Regulation and Licensure, the Nebraska Medical Association or any of its allied medical societies, the Nebraska Association of Hospitals and Health Systems, any in hospital staff committee, or any joint venture of such entities shall use or publish the material specified in section 71-3401 only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. In all events the identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances.

**71-3403. Information, interviews, reports, statements, data; privileged communications; not received in evidence.**

All information, interviews, reports, statements, memoranda, or other data furnished by reason of sections 71-3401 to 71-3403 and any findings or conclusions resulting from such studies are declared to be privileged communications which may not be used or offered or received in evidence in any legal proceeding of any kind or character, and any attempt to use or offer any such information, interviews, reports, statements, memoranda or other data, findings or conclusions or any part thereof, unless waived by the interested parties, shall constitute prejudicial error resulting in a mistrial in any such proceeding.